

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF
PENNSYLVANIA
PITTSBURGH DIVISION**

R. CATHY REARDON)	
On behalf of herself and all)	
similarly situated individuals,)	
)	
Plaintiffs,)	
)	NO. 2:08cv1730MRH
v.)	
CLOSETMAID CORPORATION)	Hon. Mark R. Hornak
)	
Defendant.)	
)	Class Action
)	

**MOTION TO APPROVE FORM OF SUPPLEMENTAL NOTICE TO THE
PRE-ADVERSE ACTION SUB-CLASS**

The Representative Plaintiff, by her undersigned counsel, hereby moves for approval of the form of supplemental notice to the Pre-Adverse Action Sub-class. In support, Plaintiff states as follows:

1. On December 2, 2013, this Court entered a Opinion and Order with respect to the motions for summary judgment filed by the Parties. ECF 157.

2. In the Opinion, this Court requested clarification from Plaintiffs on whether they were pursuing claims seeking statutory and punitive damages or actual damages. ECF 157, fn. 25. If the Plaintiffs were pursuing statutory and punitive damages, this Court noted that a supplemental notice might be necessary to the remaining Sub-Class members to ensure their understanding that Plaintiffs were seeking statutory and punitive damages. *Id.*

3. During the December 6, 2013 conference with the Court, Plaintiffs

confirmed that they were seeking statutory and punitive damages on behalf of the Sub-Class and suggested the submission to this Court of a proposed Supplemental Notice for approval.

4. Accordingly, pursuant to this Court's order of December 6, 2013, Plaintiffs hereby submit a proposed form of Supplemental Notice to be sent to those persons identified by the Parties as being in the Pre-Adverse Action Sub-Class. The proposed Supplemental Notice is attached hereto as Exhibit A.

5. This Court is authorized to require supplemental notice to class members of any step in the action as provided in Fed.R.Civ.P. 23(d) which provides, in part:

- (1) ***In General.*** In conducting an action under this rule, the court may issue orders that:
 - (A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;
 - (B) require--to protect class members and fairly conduct the action--giving appropriate notice to some or all class members of:
 - (i) any step in the action;
 - (ii) the proposed extent of the judgment; . . .

See also, 3 Newburg On Class Actions, § 8:26 (5th Ed.) ("Similarly, courts also sometimes issue notice under Rule 23(d)(1)(B) to provide class members with newly relevant information that may materially affect their decision to opt out.")

5. Defendant has represented that it objects to the fact of sending of any such supplemental notice and will submit those objections on December 16, 2013 pursuant to this Court's December 6, 2013 Order.

6. Defendant further has advanced some proposed linguistic revisions to Plaintiffs' proposed form of Supplemental Notice. The Parties are continuing to work together to seek to agree on a single agreed form of supplemental notice.

WHEREFORE, it is respectfully requested that Plaintiffs' Motion To Approve

Supplemental Notice be approved. A proposed order of court is attached.

December 10, 2013

Respectfully submitted,

R. CATHY REARDON,
For herself and on behalf of
all similarly situated
individuals.

s/ James M. Pietz

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